

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

TERRY L. GIBBS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-12-1030-M
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security	)	
Administration,	)	
	)	
Defendant.	)	


**ORDER**

On November 20, 2012, Defendant's Motion and Brief in Support of Commissioner's Motion to Dismiss was filed. Plaintiff's filed his response on November 27, 2012. On November 27, 2012, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation in this action brought pursuant to 42 U.S.C. § 405(g) recommending dismissal of this action pursuant to Fed. R. Civ. P. 12 (b)(1) for lack of subject matter jurisdiction. The parties were advised of their right to object to the Report and Recommendation by December 17, 2012. On December 4, 2012 plaintiff's Motion to Set Aside the United States Magistrate Judge Report and Recommendation was filed.

Upon review of the parties' submissions and the Magistrate Judge's Report and Recommendation, the Court GRANTS defendant's motion to dismiss [doc. 14]. Specifically, the Court finds because administrative proceedings on remand are still pending on a previous action filed by plaintiff in this Court, *Gibbs v. Barnhart*, Case No. CIV-05-1189-M this Court lacks subject matter jurisdiction in this case. The Court therefore:

- (1) ADOPTS the Report and Recommendation issued by the Magistrate Judge on November 27, 2012, and
- (2) DISMISSES this action pursuant to Fed. R. Civ. P. 12(b)(1).

**IT IS SO ORDERED this 6th day of December, 2012.**

  
VICKI MILES-LaGRANGE  
CHIEF UNITED STATES DISTRICT JUDGE